The apparently chaotic state of the authorities on the construction of the term "manufacturing establishment" is due to the fundamental principle that the intent of the legislature is the controlling consideration. Corresponding terms of similar statutes may well receive opposite interpretations in two jurisdictions, because of a difference in the legislative policies expressed by the two statutes. *Commonwealth* v. *Northern Electric L. & P. Co.*, 145 Pa. 105, 22 Atl. 839; *People ex rel. Brush Elec. M. Co.* v. *Wemple*, 129 N. Y. 543, 29 N. E. 808. It is submitted that the court in its search for a "logical rule" to fit all cases attempts to realize the impossible and fails to give proper weight to general principles of construction. As the statute in the principal case gives one class of creditors a priority over another, it should be strictly construed against the lien claimants. See *Rogers* v. *Currier*, 13 Gray (Mass.) 129, 134. The principle of *ejusdem generis*, that where particular words are followed by a general term the latter is designed to include only things of a like class with those previously enumerated, tends to show that only large industrial concerns were within the purview of the statute. *Pardee's Appeal*, 100 Pa. St. 408; *Newport News, etc. Co.* v. *United States*, 61 Fed. 488. And from the evidence quoted in the opinion, it seems a fair inference that the policy of the statute was to stimulate development of the state's mineral resources. Previous Kentucky cases present some authority for a broader interpretation. *Winter* v. *Howell*, 109 Ky. 163, 58 S. W. 591; *Bogard* v. *Tyler*, 119 Ky. 637, 55 S. W. 709. But it is submitted that the principal case involves too great a departure from this policy.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONALITY OF DISCRIMINATORY TAX ON FOREIGN CORPORATIONS DOING INTRASTATE BUSINESS. — Two foreign corporations who had long done intrastate business in Massachusetts objected to an excise tax, imposed on foreign corporations alone and based on their capital stock, as being contrary to the Constitution. *Held*, that the tax is constitutional. *Baltic Mining Co.* v. *Massachusetts*, 34 Sup. Ct. 15.

For a discussion of the question of taxation of foreign corporations, see NOTES, p. 275.

TAXATION — PARTICULAR FORMS OF TAXATION — INCOME TAX — CALCULATION OF INCOME OF MINING COMPANY. — In assessing the income of a mining company under section 38 of the federal corporation tax of 1909, U. S. COMP. STAT. SUPP. 1911, p. 947, the collector subtracted from the total proceeds of ore sold, the expense of mining it, but not its original value in the ground. *Held*, that the tax was properly assessed. *Stratton's Independence, Limited*, v. *Howbert*, 207 Fed. 419 (Dist. Ct., D. Colo.), affirmed by U. S. Supreme Court, Sup. Ct. No. 457 (Dec. 1, 1913).

A land company which had leased a mine was assessed under the federal corporation tax on the royalties received from the proceeds of the sale of ore. *Held*, that such royalties do not constitute income. *Sargent Land Co.* v. *Von Baumbach*, 207 Fed. 423 (Dist. Ct., D. Minn.).

The Supreme Court settles this conflict in favor of the view that proceeds from the sale of ore is income. The conflicting decisions of the federal district courts each find support in authority. *Commonwealth* v. *Ocean Oil Co.*, 59 Pa. 61; *United States* v. *Nipissing Mines Co.*, 202 Fed. 803. Against the view taken by the Supreme Court it is urged that ore in the ground is capital, and that therefore its sale cannot yield an income. This argument hardly accords with the actual facts. Mining consists in exploring, raising, and selling natural deposits which, when the mine is opened, are imperfectly known, and therefore non-existent for economic purposes. The "value in the ground" comes into being gradually with the progress of the mine; hence it is really

income, and may fairly be taxed as such when its final realization in cash furnishes a convenient opportunity. It seems certain that this result must be reached under the new income tax, for much of the Supreme Court's reasoning is equally applicable to that statute, and the very small deduction expressly allowed to mine-owners "for depletion of ores" necessarily implies that the cash receipts derived from such depletion are to be treated as "gross income." INCOME TAX ACT, § 2, B, G, b. Such is the rule under the English statute, where the inference is less compelling. *Alianza Co.* v. *Bell*, [1906] App. Cas. 18. *Contra*, but overruled, *Knowles & Sons* v. *McAdam*, L. R. 3 Exch. D. 23.

TELEGRAPH AND TELEPHONE COMPANIES — STANDARD OF CARE — WHETHER COMPANY MUST EXERCISE ORDINARY OR GREAT CARE TO KEEP ITS INSTRUMENTS IN WORKING ORDER. — The defendant telephone company used a night bell to give the operator notice of calls. Owing to a defect in the mechanism of the bell, it failed to ring, and a call by the plaintiff was not answered. *Held*, that the telephone company is bound to use only ordinary care to keep its facilities in working order. *Southern Bell Telephone Co.* v. *Glawson*, 79 S. E. 488 (Ct. of Appeals, Ga.).

An exception to the general rule that public service companies must exercise the highest degree of care consistent with performance of the service, exists in the case of telephone and telegraph companies. A majority of cases require only ordinary care under the circumstances. *Western Union Telegraph Co.* v. *Hays*, 63 S. W. 171 (Tex.); see *Ellis* v. *American Telegraph Co.*, 13 Allen 226, 234. Some authority imposes a duty to use the utmost care. *Marr* v. *Western Union Telegraph Co.*, 85 Tenn. 529, 3 S. W. 496. See *Fowler* v. *Western Union Telegraph Co.*, 80 Me. 381, 388. The latter cases seem preferable, for the considerations of public policy which support the rule are applicable to all public services. See 27 HARV. L. REV. 178. The difference, however, between the standard of the utmost care and the standard of reasonable care under the circumstances, with due emphasis laid upon the importance of the circumstances, seems more rhetorical than actual, even in public service. *Gardner* v. *Boston Elevated Ry. Co.*, 204 Mass. 213, 90 N. E. 534.

TORTS — INTERFERENCE WITH BUSINESS — DAMAGE TO BUSINESS REPUTATION BY WRONGFUL ACT. — The defendants, falsely representing themselves to be the husbands of the two females who accompanied them, obtained rooms in the plaintiffs' hotel for immoral purposes, and conducted themselves in an obscene and disorderly manner, to the disturbance of the other guests. The plaintiffs sue for loss of patronage consequent upon the defendants' acts. *Held*, that a demurrer to the plaintiffs' declaration be overruled. *Hall* v. *Galloway*, 135 Pac. 478 (Wash.).

The reasoning upon which the court upholds the declaration is that the facts stated amount to a private nuisance. *Sullivan* v. *Waterman*, 39 Atl. 243, 20 R. I. 273. But it is not necessary to bring this wrong under the vague definition of a private nuisance in order to grant recovery. Relief should be afforded on general principles of tort liability. As a part of good will, the right to business reputation has been recognized as a valuable property right. *Boon* v. *Moss*, 70 N. Y. 465. Business reputation is carefully protected from injury caused by false spoken or written words. *Ostrom* v. *Calkins*, 5 Wend. (N. Y.) 263; *Ohio & Mississippi Ry. Co.* v. *Press Publishing Co.*, 48 Fed. 206. Equity will enjoin the infringement of it by the wrongful use of an established trade name. *Millington* v. *Fox*, 3 Myl. & Cr. 338. The enjoyment of this right has also been protected by an injunction against imitating, in other respects, the plaintiff's manner of doing business, as by the use of similar uniforms for servants. *Stone* v. *Carlan*, 3 Code Rep. (N. Y.) 360. In the principal case the defendants have violated this right by intentionally engaging in conduct, the